

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____ WILLIAM H. SANDERS, on behalf of himself all others similarly situated :	:	
	:	
Plaintiff,	:	CASE NO.: 1:11-cv-00864-CM
	:	
vs.	:	
	:	<u>DECLARATION OF MONTANA</u>
<u>RIO,</u>	:	
FOREX CAPITAL MARKETS, LLC,	:	<u>LLC IN SUPPORT OF</u>
<u>PLAINTIFF'S</u>	:	
	:	<u>MOTION FOR LEAVE TO FILE</u>
Defendant.	:	<u>AMENDED COMPLAINT</u>
_____	:	

Pursuant to 28 U.S.C. § 1746, I, Wesley Miller, on behalf of Montana Rio, LLC,
declare under penalty of perjury that the following is true and correct:

Montana Rio, LLC ("Montana Rio") is a named plaintiff in the proposed amended
complaint. I am the President of Montana Rio, LLC.

I am over the age of 21 years of age, and make the following statements on the
basis of my own personal knowledge. If I were asked to testify in open court, I would
make the same statements as are contained in this declaration.

On behalf of Montana Rio, I opened a \$150,000.00 Forex account at FXCM in
April of 2008. As part of the account opening process, I received application and
disclosure forms from FXCM.

On behalf of Montana Rio, I submitted an Account Application to FXCM. The

EXHIBIT "A"

Account Application included a section requesting acknowledgement of certain disclosures included in the FXCM Client Agreement, including a disclosure entitled "Arbitration Agreement." The box corresponding with the Arbitration Agreement disclosure was labeled "Not Required." I did not check the Arbitration Agreement box because Montana Rio did not wish to consent to arbitration. I am no longer in possession of the Client Agreement and Account Application that I completed on behalf of Montana Rio and submitted to FXCM. However, the Client Agreement and Account Application forms were substantially similar to the forms attached as **Exhibit "A."**

Montana Rio's Account Application was processed through the FXCM branch office located off of the Dallas North Tollway in Dallas, Texas. When the branch office processed Montana Rio's Account Application, I received a fax authorization indicating a successful transmission to the FXCM office in New York.

Several days later, Julia Mahand, the Managing Director of Montana Rio, and I received a call from an FXCM employee at the branch office, Mr. Crews, who indicated that Montana Rio's application was not complete because the Arbitration Agreement box was not checked. I indicated to Mr. Crews that I understood the box was optional, and Montana Rio was not interested in arbitration. In response, Mr. Crews stated that an FXCM account could not be opened without the Arbitration Agreement box selected. Mr. Crews further advised us that "arbitration was not optional at this time."

Based on FXCM's representations that arbitration was mandatory, we re-submitted

Montana Rio's application to Mr. Crews with the Arbitration Agreement box selected, to get the account opened and trading. Based on the statements from Mr. Crews, I had no other option if I wanted to use FXCM's Forex trading services. My revised application was delivered to Mr. Crews via facsimile to FXCM's New York office.

When presented with the mandatory arbitration clause, I did not seek out one of FXCM's competitors because, at the time, I believed FXCM offered the ability to structure Montana Rio's account in a way that would facilitate our trading strategy. I have since learned of the various deceptive practices of FXCM that prevented any realistic chance of a successful trading strategy through an FXCM account.

Dated September 30, 2011

Wesley Miller

STATE OF TEXAS

COUNTY OF Dallas

This instrument was acknowledged before me on September 30, 2011, by

Wesley Miller (name or names of person or persons acknowledging).

Notary Public

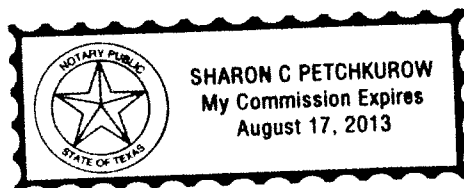
Sharon C Petchkurow

Printed Name

Sharon C Petchkurow

My Commission Expires:

8/17/13





Forex Capital Markets, LLC
 Financial Square
 32 Old Slip 10th Floor
 New York, NY 10005 USA
 Tel. 212 897 7660
 Fax. 212 897 7669
 E-mail: admin@fxcm.com

The information below must be completed in FULL.

ACCOUNT APPLICATION

Account Type (please check one only): ☐ Individual Account ☐ Joint Account ☐ Corporate Account (Name: _____)

Base Currency (please check one only): ☐ USD ☐ GBP* ☐ NZD* If Corporate, Tax ID # _____

☐ JPY* ☐ AUD* ☐ EUR* ☐ CAD*

* Platforms – account must be funded in the server currency only

IMPORTANT INFORMATION REGARDING PASSWORDS After successfully registering, you will receive a system generated temporary password. Do not share your password with anyone as it provides access to trade on your account.		Security Question: <input type="checkbox"/> What is your first pet's name? <input type="checkbox"/> What was the first street you lived on? <input type="checkbox"/> What is your nickname? <input type="checkbox"/> What is your Mother's maiden name?	
Preferred Language:		Answer:	
Email Address:			
Please complete your e-mail address clearly. This will be the primary method used to contact you.			
BASIC INFORMATION			
This information must be completed for each participant in the account, individually, jointly, by all general partners and by the corporate officers authorized to make trading decisions for the account. Any party of a joint account may singly have full authority on the account, including but not limited to, trading rights and withdrawal rights. For the purpose of this document the term "Trader" always refers to the entity for which this application has been made, regardless of legal description. Please type or print clearly.			
1 Primary Account Holder Last (Sur) Name: _____ First (Given) Name: _____ Middle Name: _____ Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married		Joint Account Holder Last (Sur) Name: _____ First (Given) Name: _____ Middle Name: _____ Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married	
2 Passport, Driver's License or Social Security no. (Please attach a copy) U.S. clients MUST provide Social Security no.		Passport, Driver's License or Social Security no. (Please attach a copy) U.S. clients MUST provide Social Security no.	
3 Date of birth (MM/DD/YYYY) _____ If you are 65 years of age or older, please review the "High Risk Investment Notice" on p. 5	Citizenship _____	Date of birth (MM/DD/YYYY) _____	Citizenship _____
4 Joint Account Holder's relationship to the Primary Account Holder _____			
5 Primary Account Holder's Home Address (Please attach proof of residence) (P.O. BOX may not be accepted) No. and Name of Street _____ City _____ State _____ Postal/Zip Code _____ Country _____ Home Telephone no. _____ Home Fax no. _____ Mobile Phone no. _____			

EXHIBIT "A"

6 Joint Account Holder Home Address (Please attach proof of residence) (P.O. BOX may not be accepted)			
No. and Name of Street			
City	State	Postal/Zip Code	Country
Home Telephone no.	Home Fax no.		Mobile Phone no.
7 Primary Account Holder's Employment Details <input type="checkbox"/> Employed <input type="checkbox"/> Self-employed <input type="checkbox"/> Retired <input type="checkbox"/> Unemployed (If unemployed, please review the "High Risk Investment Notice" on Page 5) *Source of Income Required if Unemployed*			
Name of current employer (Required)	Nature of business (Required)	Position (Required)	Years with current employer
Source of Income*	Business Address		Business Telephone no.
8 Joint Account Holder's Employment Details <input type="checkbox"/> Employed <input type="checkbox"/> Self-employed <input type="checkbox"/> Retired <input type="checkbox"/> Unemployed (If unemployed, please review the "High Risk Investment Notice" on Page 5) *Source of Income Required if Unemployed*			
Name of current employer (Required)	Nature of business (Required)	Position (Required)	Years with current employer
Source of Income*	Business Address		Business Telephone no.
9 Banking Information			
*If you intend on withdrawing funds via bank wire, you MUST complete the banking information section indicated below. All wire withdrawals will only go to the banking information on file.			
Bank Name		Bank Address	
Bank Account Number		Bank Account Holder's Name - Beneficiary (Should be same as your name(s) appearing on this Application)	
SWIFT Code or ABA Number		Person to Contact at Bank	
FINANCIAL INFORMATION (For Joint Account, please use combined financial information; For Corporate Accounts, please use the company's financial information)			
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>1. What is your total estimated annual income?</p> <p><input type="checkbox"/> Under \$25,000 <input type="checkbox"/> \$25,000-\$49,999 <input type="checkbox"/> \$50,000-\$99,999 <input type="checkbox"/> \$100,000-\$249,999 <input type="checkbox"/> \$250,000-\$1,000,000 <input type="checkbox"/> Over \$1,000,000</p> <p>(If your annual income is less than \$25,000, please review the "High Risk Investment Notice" on Page 5.)</p> <p>2. Net worth (assets minus liabilities)?</p> <p><input type="checkbox"/> Under \$25,000 <input type="checkbox"/> \$25,000-\$49,999 <input type="checkbox"/> \$50,000-\$99,999 <input type="checkbox"/> \$100,000-\$249,999 <input type="checkbox"/> \$250,000-\$1,000,000 <input type="checkbox"/> \$1,000,000-\$5,000,000 <input type="checkbox"/> \$5,000,000-\$10,000,000 <input type="checkbox"/> Over \$10,000,000</p> <p>(If your net worth is less than \$50,000, please review the "High Risk Investment Notice" on Page 5.)</p> <p>3. Liquid assets (assets that can be quickly converted to cash)?</p> <p><input type="checkbox"/> Under \$25,000 <input type="checkbox"/> \$25,000-\$49,999 <input type="checkbox"/> \$50,000-\$99,999 <input type="checkbox"/> \$100,000-\$249,999 <input type="checkbox"/> \$250,000-\$1,000,000 <input type="checkbox"/> Over \$1,000,000</p> <p>4. Have you declared bankruptcy in the last 10 years? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, please indicate date of discharge and provide copy of discharge letter.</p> <p>_____</p> </div> <div style="width: 48%;"> <p>5. Will any person other than Trader control, manage, or direct the trading in this account? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, please complete Limited Power of Attorney Form.</p> <p>6. Do you have or have you ever had any other account(s) with FXCM? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, Account Number(s): _____</p> <p>7. Are you or any person having interest in this account:</p> <p>1. A member of any commodity exchange? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, Please List: _____</p> <p>2. An Associated person (AP) with any other CFTC or NFA registered firm? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, Please List: _____</p> <p>3. An employee of a regulatory agency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, Please List: _____</p> </div> </div>			
TRADING EXPERIENCE			
1. Do you have experience trading securities?		<input type="checkbox"/> Yes <input type="checkbox"/> No	Years? _____
2. Do you have experience trading commodities?		<input type="checkbox"/> Yes <input type="checkbox"/> No	Years? _____
3. Do you have experience trading futures?		<input type="checkbox"/> Yes <input type="checkbox"/> No	Years? _____
4. Do you have experience trading currencies through interbank or OTC foreign exchange?		<input type="checkbox"/> Yes <input type="checkbox"/> No	Years? _____
If you do not have any prior trading experience, please review the "High Risk Investment Notice" on Page 5.			

SIGNATURE

PLEASE ACKNOWLEDGE YOUR AGREEMENT AND UNDERSTANDING OF EACH OF THESE SPECIFIC DISCLOSURES OF THE CLIENT AGREEMENT BY CHECKING THE APPROPRIATE BOX NEXT TO EACH DISCLOSURE TITLE.

			Primary Account Holder	Joint Account Holder
1. <u>Risk Disclosure Statement</u>	Pg 1	Required	<input type="checkbox"/>	<input type="checkbox"/>
2. <u>Notice to Traders</u>	Pg 1	Required	<input type="checkbox"/>	<input type="checkbox"/>
3. <u>Trader Agreement</u>	Pg 2	Required	<input type="checkbox"/>	<input type="checkbox"/>
4. <u>Consent to Jurisdiction and Venue (New York County, NY)</u>	Pg 5	Required	<input type="checkbox"/>	<input type="checkbox"/>
5. <u>FX Agreement</u>	Pg 5	Required	<input type="checkbox"/>	<input type="checkbox"/>
6. <u>Lending Agreement</u>	Pg 5	Required	<input type="checkbox"/>	<input type="checkbox"/>
7. <u>High Risk Investment</u>	Pg 5	Required	<input type="checkbox"/>	<input type="checkbox"/>
8. <u>Social Security or Tax ID certification & Backup Withholding Statement</u>	Pg 5	Required	<input type="checkbox"/>	<input type="checkbox"/>
9. <u>Authorization to Transfer Funds</u>	Pg 5	Required	<input type="checkbox"/>	<input type="checkbox"/>
10. <u>Consent to Electronic Transmission of Confirmations & Account Statements</u>	Pg 5	Required	<input type="checkbox"/>	<input type="checkbox"/>
11. <u>Arbitration Agreement</u>	Pg 5	Not Required	<input type="checkbox"/>	<input type="checkbox"/>

PROMOTIONAL CODE

If you have received a promotional code, please indicate the code in the space provided.

Code _____

REFERRAL

How did you hear about FXCM? ☐ Magazine ☐ Online Ad ☐ Friend ☐ Referring Broker (If by Referring Broker, please review "Referral Disclosure" on Page 2.)
☐ Newspaper ☐ Seminar ☐ Search Engine Referring Broker Name _____

CUSTOMER INFORMATION. I hereby represent that the information provided by me on this packet is true and correct. I further represent that I will notify FXCM of any material changes in writing. FXCM reserves the right, but has no duty, to verify the accuracy of information provided, and to contact such bankers, brokers and others as it deems necessary.

THIS IS A CONTRACTUAL AGREEMENT. YOU WILL BE BOUND HEREBY. DO NOT SIGN UNTIL YOU HAVE READ ALL OF THE FOREGOING CAREFULLY.
 I acknowledge that this Client Agreement is a legally binding contractual agreement. I have read the Client Agreement carefully, and by signing, I agree to be bound by every term and condition, including the items listed above (1-11). No modification of this Client Agreement is valid unless accepted by FXCM in writing. I confirm that I have received a full set of account documents and I have not made any alterations or deletions to this agreement or any such documents from the original forms. In the event that there are any alterations or deletions to this agreement such alteration and deletions shall not be binding on FXCM and said original forms shall govern Trader account relationship with FXCM.

Primary Account Holder's Signature:

Print Client Name: _____

Today's Date (MM/DD/YYYY): _____

Joint Account Holder's Signature:

Print Client Name: _____

Today's Date (MM/DD/YYYY): _____

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

To aid the government's fight against the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Therefore, we are required to obtain your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

PLEASE NOTE THAT ALL NON-U.S. APPLICATIONS MUST BE ACCOMPANIED BY:

1. A PHOTOCOPY OF YOUR PASSPORT OR DRIVER'S LICENSE OR OTHER GOVERNMENT ISSUED ID.
2. A PHOTOCOPY OF PROOF OF ADDRESS (i.e., A COPY OF UTILITY BILL OR BANK STATEMENT NO MORE THAN 6 MONTHS OLD)

Upon processing of the account application, you will be contacted via E-mail.

Please ensure the application is complete and legible to avoid errors or delays in processing.

FXCM does not charge applicants or clients for completing its applications or forms.

Important warning regarding fraudulent use of FXCM's website and trading platform.

Any person who, knowingly and with intent to defraud FXCM or its affiliates, submits an account application or other information containing any materially false information or conceals, for the purpose of misleading, information concerning any related fact material, commits a fraudulent act, which is a crime which may subject such person to criminal prosecution and the imposition of criminal and civil penalties.

If you intentionally provide us with any false or misleading information and we suspect fraud, we will communicate the facts surrounding your communication to us to all relevant national, state and local law enforcement authorities.